IN THE

Supreme Court of the United States

No. 140, OCTOBER TERM, 1962

NATHAN WILLNER,

Appellant,

vs.

COMMITTEE ON CHARACTER and FITNESS.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS
OF THE STATE OF NEW YORK

BRIEF IN REPLY TO *AMICUS*

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Respondent
80 Centre Street
New York 13, N. Y.

PAXTON BLAIR
Solicitor General

DANIEL M. COHEN
Assistant Attorney General,
of Counsel

Dated, New York, N. Y., February 18, 1963.

249 Press of Fremont Payne, Inc., 80 Washington St., N. Y.—BOwling Green 9-8153

INDEX

Cases Cited

Rules and Statutes Cited

IN THE

Supreme Court of the United States

No. 140, OCTOBER TERM, 1962

NATHAN WILLNER,

Appellant,

vs.

COMMITTEE ON CHARACTER AND FITNESS.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

BRIEF IN REPLY TO *AMICUS*

This brief is submitted in reply to that to be filed *amicus* by a divided single committee of the Association of the Bar of the City of New York. No other bar association or committee thereof has deemed it appropriate to attempt to take a position as to any issues which *may* be involved on this appeal. Nevertheless, and despite the extremely tardy appearance of this committee in this proceeding (five days before the argument of the case is scheduled before this Court) the Respondent, on February 15, 1963, *consented* to the filing of the *amicus* brief.*

* In our main brief, we have referred to the Committee on Character and Fitness as "The Committee". To avoid confusion, we shall refer to The Bill of Rights Committee as either the "*amicus*" or the "B-Rt Committee". The preparation of this response is predicated upon a proof received February 15, 1963 and upon the assumption that the *amicus* brief to be served and filed February 18, 1963 will be the same as the proof.

Outline of Reply to *Amicus*

The B-Rt Committee has overlooked the fact that the Respondent functions primarily as an *investigator*. *Admissions* to the New York Bar are granted or denied *only* by the Appellate Division, which has not surrendered to the Respondent any of its *judicial* functions.

The effectiveness of the Respondent as an investigator would be seriously hampered by requiring it to notify in advance all applicants of any subject under investigation and to require all complainants to appear in person to present their complaints against any applicant in his presence, and to be subjected, in addition, to cross-examination.

The B-Rt Committee has also overlooked the fact that the petitioner failed, at an appropriate time, to raise before the New York courts his present (also 1954) claim that he had been deprived of due process. In addition, it has neglected to observe that he failed to utilize available New York procedures even to obtain or to ascertain the contents of the record upon which he knew or should have known the New York courts would dispose of his present petition for leave to renew his application for admission to the New York Bar.

1. B-Rt Committee has overlooked the fact that Willner did not seek to employ available New York procedures to "ascertain" the record upon which the Court of Appeals reviewed his petition.

The B-Rt Committee has asserted for the appellant a right which he did not seek to assert. We do not know how much of the papers or records were known to the appellant or his counsel prior to the Court of Appeals argument. But, *if* the appellant proceeded in ignorance of any essential record fact before that Court, this was not the fault of the Court of Appeals.

A.

In 1954, in appellant's brief to the Court of Appeals, in support of a motion for *reargument of* a motion for leave to appeal to that Court, appellant's present counsel indicated his then awareness that the Court had before it the Respondent's *entire record* as of that date. In his brief in support of reargument, he stated in November, 1954 (p. 3):

> "It may be, that this court, *having examined the entire record*, was satisfied the Committee was justified in its determination." (Italics supplied)

In support of his original application for leave to appeal to the Court of Appeals in 1954, Willner had asserted (p. 8):

> "An *examination of the record* in this matter will disclose the fact that I denied the accusations made by the two lawyers mentioned." (Italics supplied)

At the least, petitioner knew that there was a record of his proceedings before the Respondent.

B.

Even if we assume the appellant did not have full knowledge of the record before the Court of Appeals, no constitutional question arose as a result of his attorney's willingness to argue his questions of law, without resort to that record; or by reason of his attorney's failure to make the necessary application to the Court of Appeals to obtain such information.

Indeed, as the *amicus* points out (Br. p. 31, footnote), the New York Court of Appeals has the power and has exercised its discretion, *when that discretion has been invoked*, to grant an applicant's request to permit a complete examination of his file, in order to aid the Court of

Appeals upon an applicant's appeal to it. See *Matter of Anonymous*, 9 N. Y. 2d 901 (1961), where the Court of Appeals wrote (p. 902):

> "Motion for leave to examine the confidential record in this proceeding granted and appellant and his attorney permitted to examine the minutes of the hearing of June 6, 1958 and the reports of the individual members of the Character Committee made subsequent thereto in the office of the Clerk of the Court of Appeals."

Willner must be presumed to have known of the foregoing decision, published almost a year *before* he obtained leave to appeal to the Court of Appeals.

Upon the instant petition, the New York Court of Appeals granted the appellant leave to appeal to that Court. There is nothing in the record to show that the same Court, if application had been made, would have denied appellant or his counsel access to all the papers that had been transmitted to that Court. *No such application appears to have been made.*

Nor do we know of any New York decision which would have precluded the Court of Appeals from granting any such order. On the contrary, Judiciary Law, § 90, subd. 10, specifically empowers even the "justices of the appellate division * * * in their discretion, by written order, to permit to be divulged all or any part of" the "papers, records and documents upon the application or examination of any person for admission". This power of disclosure has been exercised by the Appellate Division as well as the Court of Appeals in appropriate cases. See *Matter of Appleman*, 280 App. Div. 939 (2d Dept., 1952); where, upon motion, disclosure was permitted "to the extent of permitting the applicant to examine and copy, under supervision of the clerk of this court or the secretary of the Character Committee, all papers on file with said committee and clerk, excluding, however, all confi-

dential reports of the committee and the court or any member thereof, and excluding also any other matter of a confidential nature contained in such filed papers."

2. The Respondent is primarily an investigator and then a reporter, not a trier of facts.

The B-Rt Committee bases its request for reversal of the Court of Appeals order upon the erroneous assumption that the Respondent, in the performance of its duties "acted as investigator, reporter and trier of facts, in what is an integral part of a judicial proceeding" (*Amicus* Br., p. 21).

We, too, would like to up-grade our client, but the fact is that the *Respondent* is *not* empowered to exercise a *judicial* function, by *denying* any application for admission to the Bar. Its function is primarily *investigatory* (Rule 1). It may issue a *certificate* that a person is "entitled to admission" (Rule 1). Unquestionably, it has the incidental power to make reports and recommendations to the Appellate Division. *But only the Appellate Division, itself,* however, *has the power to admit or deny admission to the Bar* (Judiciary Law, § 90, subd. 1, par. "a").

If the Respondent or any other New York Character Committee were to withhold a certificate *arbitrarily*, New York has a procedure to correct such *arbitrary* action. We have no doubt that, under *such* a set of facts the Appellate Division or Court of Appeals, acting *judicially*, could compel the Respondent to issue a certificate. New York Civil Practice Act, Article 78.*

Formal admission proceedings are conducted by the *Appellate Division*. Applicants attend personally before

* See, e.g., *Slotnick* v. *Hilleboe*, 149 New York Law Journal No. 12, p. 17, January 17, 1963, where such procedure was utilized, in an attempt to compel the amendment of a coroner's death *certificate*, to recite the cause of death as "accidental," rather than occasioned by "myocardial infarction," but where the petition failed to show the coroner had been *arbitrary*.

the Court and are admitted, upon motion and a statement by the Chairman of the Respondent or some other member thereof that the applicants have shown themselves to be entitled to admissions.

The Respondent serves a function akin to that of the barrier which railroads have been required to maintain across grade-crossings. The Respondent lifts this barrier and, in effect, gives the Appellate Division a green light signal to sanction the forward progress of an applicant to the assumption of the many responsible duties of a member of the New York Bar *if its investigation discloses* no danger in allowing such admission. Then the Respondent (as it can and does in almost all cases), certifies that the applicant is "entitled to admission". But when its investigation discloses a danger or risk, the Respondent's barrier (no certificate) remains in place, subject, however, to being removed by the Appellate Division itself when and if the Court in convinced that the danger or risk reported by the Committee does not exist or has been removed (Rule 1).

We may suggest, too, that the Respondent's duty is also analogous to that of a physician checking upon the physical well-being of a patient before the issuance of a health certificate. We doubt whether a physician would be deemed guilty of arbitrary action if he refused to issue a certificate of *good* health to a person, who, at the time of the examination, clearly showed symptoms of tuberculosis, hepatitis or cancer. Separate analogous questions, depending upon circumstances, might be presented: 1) as to whether such a person might be *entitled*, at a later date to a physical re-examination; and 2) as to whether the nature of the disease, once exposed, could be shown, by expert opinion, or otherwise, to have been cured or curable.

To a certain extent, the *amicus* has appeared to recognize the limited function exercised by the Respondent. It has taken no position as to Willner's qualifications "for ulti-

mate admission to the bar" and concedes that this is "a matter for determination by the Committee on Character and Fitness and by the courts of New York * * *" (B-Rt Br., p. 3).

The New York statutes and rules (Appellee's Br., pp. 3-8; *Amicus* Br., pp. 4-7) clearly indicate a reservation to the *Appellate Division* of the power to *determine* who shall be admitted to membership in the New York Bar. These provisions also clearly place with the *Appellate Division itself:* jurisdiction over all papers relating to an application for admission; the power to disclose such papers; and the entertainment of any request for permission to renew an application for admission.

3. The *amicus* overlooks the fact that the appellant failed at an appropriate time to assert that the respondent's investigative procedures impaired his alleged constitutional rights.

The *amicus* appears to have disregarded completely this Court's doctrine that constitutional claims must be raised at the first available opportunity. Even Willner's petition to the Appellate Division upon the instant application for leave to renew his application for admission to the Bar was predicated, not upon constitutional grounds, but upon allegations of *conspiracy* (R., 2-12). Moreover, the record shows the following additional reasons for not permitting the appellant at this time to obtain a disposition of constitutional questions by this Court:

1. He does not appear to have sought any direct court review upon constitutional or other grounds after the Respondent had declined in 1938 to grant him a certificate of good character.

2. He does not appear to have sought direct court review upon constitutional or other grounds of the Respond-

ent's refusal to issue him a certificate of good character in 1950.

The appellant undertook other, abortive proceedings to obtain *rehearings* at dates substantially distant from the dates of the Respondent's denials. He did not, however, afford the Appellate Division itself an opportunity to accord him any such hearing, with confrontation and cross-examination of witnesses at a time when it was likely that these witnesses would be alive, available and when their recollection of the subject matter of their testimony would not have faded.

New York Judiciary Law, § 90 makes the disclosure of proceedings before the Character Committee *discretionary*. That discretion too, does not appear to have been invoked by the appellant here at an appropriate time. Furthermore, he was not *later* entitled, as a matter of absolute *right*, to obtain what he might at one time have obtained as a matter of *discretion*. See *Pittsburgh Plate Glass Co. v. U. S.*, 380 U. S. 395 (1959), where this Court said (at p. 401):

> "The short of it is that in the present case the petitioners did not invoke the discretion of the trial judge, but asserted an absolute right, a right which we hold they did not have."

4. The performance by the Respondent of its investigative duties would be hampered by a requirement that applicants be granted notice in advance of the charges in any complaints filed against them.

The *amicus* suggests that the procedures which have traditionally been used by committees such as the Respondent in connection with their investigation into the character of applicants for admission to the Bar be abandoned and that there be substituted for the procedures traditionally

used the same procedures which have been utilized in connection with proceedings to disbar attorneys (B-Rt Br., p. 2). We submit that the *amicus* has succumbed to a certain amount of confusion in relation to the functions to be served by a committee such as the Respondent. As we have stated, that function is primarily *investigatory*. See *Hannah* v. *Larche*, 363 U. S. 420, 440-453 (1960), distinguishing between the procedures required to be followed as to adjudication and investigative functions.

The Respondent's service to the community depends, to a great extent, upon its continued ability to maintain the secrecy of its proceedings. See *United States* v. *Procter & Gamble*, 356 U. S. 677, 681-682 (1958), where it was recognized that the "indispensable secrecy of grand jury proceedings" must not be broken except where there is a "compelling necessity". See also *Anonymous* v. *Baker*, 360 U. S. 287, 290-291 (1959); and see also *Pittsburgh Plate Glass Co.* v. *U. S.*, 380 U. S. 395, 400 (1959), where it was held that even under Rule 6(e) of the Federal Rules of Criminal Procedure, a "particularized need" for Grand Jury testimony had to be shown by the defense, which outweighed the policy of secrecy.

Traditionally, the New York courts have treated rejections of applicants with considerable delicacy. *Anonymity* of the applicants has been preserved, as have any charges against them, wherever possible. See, for example, *Matter of Anonymous*, 205 N.Y.S. 2d 740 (1961). These secrecy provisions have been sustained against constitutional attack, when employed in another context—with relation to a general investigation into "alleged improper practices at the local bar". *Anonymous* v. *Baker*, 360 U. S. 287, *supra*, where the duties of even an investigating State Supreme Court Justice were stated by Mr. Justice HARLAN to be (p. 291):

> "purely investigatory and advisory, culminating in one or more reports to the Appellate Division upon which future action may then be based."

He continued (p. 291):

> "In the words of Mr. Justice CARDOZO, then Chief Judge of the New York Court of Appeals, the proceedings at Special Term thus simply constitute a 'preliminary inquisition, without adversary parties, neither ending in any decree nor establishing any right . . . a quasi-administrative remedy whereby the court is given information that may move it to other acts thereafter. . . .' *People ex rel. Karlin* v. *Culkin*, 248 N. Y. 465, 479, 162 N. E. 487, 492."

The analogy to grand jury proceedings of the type of investigation involved in *Anonymous* v. *Baker* is, we submit, equally apposite here.

The considerations for preserving the traditional methods of examining bar applicants have also been set forth by Mr. Justice HARLAN in the second *Konigsberg* case (366 U. S. 36, 41-42), even though a character committee's investigations are *specific* rather than *general*.

To what we have stated on this subject in our main brief (p. 68), we need add, in response to the *amicus*, simply that Character Committee interrogation might be rendered worthless, if applicants were apprised in advance of the committee's proposed line of questioning. Claims of surprise, or truly faulty recollection by an applicant as to a subject matter being investigated, would not present constitutional questions. They would simply be the basis of a request for an *adjournment*, so that an applicant, unprepared on original questioning, could be afforded a further opportunity to meet any issue presented or supply any information which he might require additional time to obtain.

5. The thrust of the *amicus* against the 1950 Ellison report is misplaced.

The principal basic upon which the *amicus* has predicated its interest in this case is that one of the reports,

made in 1950 by Mr. Ellison, one of its members, to the full Committee referred to certain facts not set forth in the appellant's questionnaire or in his testimony. To that extent, and possibly further, the Respondent is stated to have given evidential weight to *ex parte* statements which were not subject to cross-examination. Several simple answers, we submit, are available to meet the *amicus* position.

First, the Respondent is not limited by constitutional law, or otherwise, to obtaining its information from or through an applicant.

Second, the procedures which might be required to be followed in connection with the admission, of a person already admitted to a local bar or duly licensed as an accountant, to practice before the tax court or other administrative body, are not the same as those which traditionally, as a matter of due process, have applied to the admission of attorneys, in the first instance, to a local bar. *Cf. Goldsmith* v. *Bd. of Tax Appeals*, 270 U. S. 117 (1925), with *Konigsberg* v. *State Bar*, 366 U. S. 36 (1961). The fact that the appellant had already been admitted to practice in another profession did not entitle him to any different procedure on admission to the New York Bar. So far as the Appellate Division was concerned, he was still a new applicant. And any favorable presumption that might flow from his continued membership in another profession was still subject to dissipation when matters came to the Respondent's attention which presented questions as to the appellant's character. The fact that disciplinary action had not been taken against him in one profession did not grant him *carte blanche* to enter another profession. The lack of disciplinary action may have signified simply the failure of the disciplinary machinery in the other profession to function effectively.

Third, the Ellison memorandum was *merely a report and recommendation to* the Respondent. Partly, it was a

recapitulation of matters previously reported. Principally, and we do not gather that the *amicus* disputes this, it was an account of the appellant's own conduct and admissions. To the extent that it contained references to *ex parte* statements, those references clearly appear to have been made to rather trivial and incidental matters. To that extent, we submit, that the Respondent (whose experienced membership may be deemed to have been as equally concerned with the integrity of its decisions and fairness to applicants as is the B-Rt Committee) may not be assumed to have been incapable of, unwilling or, even unlikely, to make the same distinctions which have been made by the *amicus* between tested and untested allegations. We have annexed hereto a copy of a letter, dated 27 November, 1962, written to Herbert Brownell, the current President of the Association of the Bar of the City of New York, indicating that the Respondent's practice has been *not* to rely on *ex parte* statement (Appendix A) and stating flatly (*infra*, p. 12):

> "No applicant is ever turned down on *ex parte* information."

Fourth, as stated by Judge EDGERTON, in *Brooks* v. *Laws*, 208 F. 2d 18 (D. C. Circ., 1953), in the quotation cited by the *amicus*, even secret charges, not revealed to the appellant, might have been an appropriate basis upon which the Respondent could "decline to recommend his admission" for its action is not final if he chooses to take his application to court (208 F. 2d, at p. 33).

Fifth, the appellant did *not* (either in 1938 or 1950) take his application to the Appellate Division to protest the use of *ex parte* statements. For brevity, we refer to our main brief for a statement of the legal measures which he chose to employ instead.

Sixth, by reason of the appellant's failure to "take his application to the Court", promptly after his rejection in

1950, we do not have from the New York courts any *pronouncement* that, under all the circumstances revealed by appellant's record, a trial-type hearing should have been granted as to any or all of the issues which may have been presented by the record. We can only speculate on what might have been done by the Appellate Division or the Court of Appeals, if the appellant had chosen then to review directly the Respondent's June 9, 1950 determination that it could not certify the appellant for admission. We need note only that this same Appellate Division has been particularly astute in preventing *ex parte* evidence from being employed in license revocation proceedings. *Matter of Cianelli* v. *Dept. of State*, 16 A. D. 2d 352 (1st Dept., 1962).

Seventh, upon the present record it would seem appropriate to paraphrase Mr. Justice Douglas' dissent in *Chessman* v. *Teets*, 354 U. S. 156, 172 (1957), a capital case, by stating that, in any event, whatever may be "the ideal of due process * * * the facts of this case cry out against its application here". Cf. *Dickinson* v. *United States*, 346 U. S. 389, 396 (1953).

CONCLUSION

The order of the Court of Appeals should be affirmed.

Dated: New York, N. Y., February 19, 1963.

Respectfully submitted,

Louis J. Lefkowitz
Attorney General of the
State of New York
Attorney for the Respondent

Paxton Blair
Solicitor General

Daniel M. Cohen
Assistant Attorney General

APPENDIX A

SUPREME COURT

APPELLATE DIVISION—FIRST JUDICIAL DEPARTMENT

OFFICE OF COMMITTEE ON CHARACTER AND FITNESS

JOSEPH F. HIGGINS, Secretary

51 Madison Avenue, New York 10, N. Y.

LW:EA 27 November 1962

Herbert Brownell, Esq.
25 Broadway
New York City 4

Dear Herb:

As you know from our telephone conversation of a day or two ago, I am grateful for your letters of October 17 and November 21, and happy to have the suggestion that your Committee on the Bill of Rights of the Association of the Bar draft for the consideration of the Committee on Character and Fitness, and for the Appellate Division of the Supreme Court for the First Department, a set of basic rules for the examination of applicants for admission to the New York Bar.

Perhaps it might be helpful if Professor McKay were to let me narrate fully to him the procedures which we have followed for many years, since I apprehend from the talk I had with him that he and the Committee may not be fully acquainted with the rules which we presently follow.

Briefly, our procedure is as follows:

1) When the New York State Board of Law Examiners has certified to the Character Committee the persons who

have passed the bar examination, the Character Committee sends a notice to each successful bar examination candidate, requesting that the applicant come to the office of the Committee and obtain a questionnaire.

2) When the applicant comes to the office of the Committee he is given the questionnaire, and in addition to printed instructions the staff members answer any questions the applicant may have, and tell him orally what is necessary to put his completed questionnaire in good form.

3) When the questionnaire has been filed, the Committee staff conduct a routine investigation, using various public agencies, as the police department, for information. The staff also may investigate matters disclosed by the applicant in his questionnaire, where such matters may require further investigation. The applicant may be asked to furnish further information, where such is necessitated by answers already given in the questionnaire. A common instance is where answers to the questionnaire state that the applicant has been divorced, or where a marriage has been annulled, and where we may wish copies of the pleadings and decree, and, in some cases, a transcript of the evidence. There are an infinite variety of different situations where the applicant's answers to the questionnaire may disclose that further information is needed, and where the applicant is asked to furnish such further information.

4) Voluntary information, from time to time, is submitted to the Committee by third parties. For instance, a law school Dean may see in The New York Law Journal the list of those persons who have passed the bar examination, and may find a name which is similar to a person who was dismissed from his school. The Dean may suggest to the Committee the advisability of determining whether or not the applicant is the same person as the

one dismissed from the Dean's law school, and if so what representations the applicant made to get into the second law school.

5) The applicants are then examined orally. There being ten members of the Committee, it is divided into morning and afternoon sub-committees. The applicant is examined by one member of the Committee. If the Committee member is satisfied as to the character and fitness of the applicant, the Committee member reports favorably to the full Committee, and the applicant is certified to the court for admission. If the Committee member is of opinion that there are questions which adversely affect the applicant and therefore need further Committee consideration, the Committee member refers the matter to the sub-committee on which the Committee member is sitting. Where such questions still persist, the Chairman may refer the matter to the full Committee. These matters may range all the way from questions of residence to questions involving serious moral turpitude.

6) If after consideration by the sub-Committee, or the full Committee, there still remain questions as to the applicant's character and fitness, the applicant is examined orally by either the sub-Committee or the full Committee. A stenographic transcript of the examination is taken by a Supreme Court reporter.

Thus, where the applicant's questionnaire, or the Committee's investigation discloses facts adverse to the applicant, the applicant is given a full hearing with respect to these adverse facts and a stenographic transcript is made of his testimony. No applicant is ever turned down on *ex parte* information. It is on the explanation and the testimony of the applicant himself regarding the adverse information that the Committee decision to recommend admission or rejection is made, and not upon *ex parte* facts.

Appendix A

For the more than a quarter of a century during which I have been a member of the Committee, I know of no applicant who has been rejected on *ex parte* information. Where the Committee certifies to the Court that it cannot certify the applicant has the requisite character and fitness for admission to the Bar, that certification is based entirely on the record made by the applicant himself in his questionnaire and his oral examination.

To illustrate, a perhaps amusing incident occurred some years ago, where the Governor of a nearby state gave to the Committee a flambouyant typewritten letter of recommendation for an applicant for admission on motion, with a carbon copy to the applicant. In the lower left-hand corner of the ribbon original there was a pen and ink postscript to the effect that the applicant was no good and should not be admitted to the New York Bar. Our examination of the background demonstrated that the man writing the letter had a personal bias. The Committee did not deem it even necessary to bring the matter to the attention of the applicant or to examine him orally. A rather recent incident arose where a third party wished to give adverse and confidential information to a Committee member. The informant was told he would have to file an affidavit with the Committee setting forth the alleged adverse facts in order that the applicant might be examined personally on such alleged adverse facts. The affidavit was not filed.

You will see from the above that:

1) To my knowledge no applicant is ever rejected on *ex parte* information.

2) Where adverse information comes to the attention of the Committee, the applicant is examined orally and on his explanation of the facts is either certified for admission or rejected. The applicant thus has the privilege of con-

frontation in the fullest sense of the word, because it is on his appearance and testimony before the Committee, and his alone, that the decision to certify his admission or rejection is made. In examining orally an applicant on adverse matters, the applicant has full opportunity, not only to explain the facts completely but also to demonstrate his candor and truthfulness. Obviously, evasiveness and lack of candor in the applicant's oral examination is a factor to be considered.

The above procedure relates to applicants who have passed the New York Bar examination. The same procedure applies to applicants for admission on motion, where, in addition, the applicant is asked to furnish the Committee with a report from the National Conference of Bar Examiners.

You will agree, I am sure, that to permit an applicant to have, as it were, an examination before trial of the files of the Committee, and a disclosure of the sources of information, especially those from public authorities, as well as from private citizens, deans of law schools, etc., would make it extremely difficult for the Committee to obtain such information. Since the information is used only for the purpose of getting an explanation from the applicant regarding the facts, and since on the applicant's own explanation the decision of certification or rejection is made, I personally can see no need for a rule which would require the Committee to confront applicants with the public authorities or persons who had given such information. Indeed, that type of confrontation not only would make it extremely difficult for the Committee to get cooperation from the public authorities and other outside sources, but probably would result in undetermined issues of fact. It is much better, in my opinion, that our present procedure be followed, and that the information given to the Committee by outside parties be used merely as a basis for

giving the applicant an opportunity to explain the matter himself.

I agree entirely with the views expressed by you with reference to the question as to whether or not the Association of the Bar should file a brief *amicus* in *Willner* v. *The Committee on Character*. Certiorari was granted, as you know, not upon the full record, but only upon the very short record made on the last application for rehearing. For the Association of the Bar, or its Committee, to file a brief *amicus* in such situation, would seem to me quite extraordinary under the circumstances, especially in view of the decisions of the Appellate Division and the Court of Appeals in the *Willner* matter.

With sentiments of esteem and cordial greetings, I am

Sincerely yours,

LOWELL WADMOND

cc: Hon. Bernard Botein
Hon. Daniel M. Cohen